

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE SMOKINKWR, LLC., Debtor	§ § § §	CASE NO. 21-33989 Chapter 11
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**TAALVI, LLC.'S MOTION FOR RELIEF FROM THE STAY
TO OBTAIN POSSESSION OF COMMERCIAL REAL PROPERTY**

THIS IS A MOTION FOR RELIEF FROM THE AUTOMATIC STAY. IF IT IS GRANTED, THE MOVANT MAY ACT OUTSIDE OF THE BANKRUPTCY PROCESS. IF YOU DO NOT WANT THE STAY LIFTED, IMMEDIATELY CONTACT THE MOVING PARTY TO SETTLE. IF YOU CANNOT SETTLE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY AT LEAST 7 DAYS BEFORE THE HEARING. IF YOU CANNOT SETTLE, YOU MUST ATTEND THE HEARING. EVIDENCE MAY BE OFFERED AT THE HEARING AND THE COURT MAY RULE.

IF A TIMELY OBJECTION IS FILED, THE COURT WILL CONDUCT A HEARING ON THIS MOTION ON April 19, 2022 AT 10:00 A.M. IN COURTROOM 515 RUSK STREET, COURTROOM 401, 4TH FLOOR, HOUSTON, TEXAS 77002

To the Honorable United States Bankruptcy Judge:

TAALVI, LLC. ("TAALVI" or "Movant"), a creditor and party in interest, hereby moves for entry of the Order Terminating the Automatic Stay, and would respectfully show as follows:

JURISDICTION

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2). Venue of this proceeding is proper in this district pursuant to 28 U.S.C. §1408 and 1409. The relief requested may be granted pursuant to 11 U.S.C. §§362(b)(22) or 362(d).

BACKGROUND

2. On April 17, 2018, Marshland Foods, LLC., a non-interested party, entered into an Amended Lease Agreement with Vaquero Kirby Partners, LP. (Subsequently assigned to TAALVI, LLC., a creditor herein). Thereafter, Marshland Foods, LLC. (Assignor therein) enter into an Assignment and Assumption Agreement with SMOKINKWR, LLC. (the "Debtor" and Assignee there), a copy

of the Amend Lease Agreement and Assignment (collectively referred to as the “Lease”) are attached hereto and incorporated herein as Exhibit A and B. The Lease has a term of ten (10) years, requiring a minimum monthly base rent of \$6,003.00 for the first five (5) years term.

3. The current monthly amount due, including additional rents, is \$7,676.63 each month.
4. The commercial leased space where debtor conducted its business is located at 11401 Broadway Street, Pearland, Texas 77584 (the “Property”).
5. The Lease is continuing and unexpired. At the time of this filing, Debtor failed to pay the following rent due:

- a. Pre Petition: Amount Due is \$9,197.62
- b. Post-petition: February 2022 through March 2022
Arrearage Total: \$15,353.26.

6. SMOKINKWR, LLC., Debtor, has failed make rental payment after the filing of it bankruptcy petition, and continue to occupy the commercial property without any payment toward rents.
7. Additionally, SMOKINKWR, LLC., Debtor, has failed to dispose the cooked grease appropriately; specifically, debtor has placed buckets of grease in violation of the ordinance with the City of Pearland. A copy of the pictures of the stored grease are attached hereto as Exhibit “C”
8. The storage of these grease created a hazardous conditions whereby it could overflow into the public drainage system and a violation resulted therefrom.
9. Debtors’ Schedule G assumed the contract with TAALVI, and continues to occupy the premises without paying post-petition rent for the month of February 2022 through March 2022. A schedule of the rent payments is attached hereto as Exhibit “D”.

REQUEST RELIEF

10. This Motion requests an order from the Bankruptcy Court authorizing Movant to obtain possession of the property that is identified in paragraph 2.
11. The property identified in paragraph 2 is not exempt property.
12. Pursuant to 11 U.S.C. §362(d)(1), cause exists because Movant lacks adequate protection of its interest in the property and the continuous storage of hazardous waste. Debtors failed to make their post-petition from February 2022 through March 2022 for rent payments, and accordingly, Movant is entitled to possession of the Property.
13. This Motion seeks relief against SMOKINKWR, LLC, as parties under contract and in possession.

CONCLUSION

TAALVI respectfully requests that the Court enter the Order Terminating the Automatic Stay, allow Movant to proceed with eviction, and for all other relief Movant may be entitled against SMOKINKWR, LLC. aka Dickey’s Barbeque Pit. as debtor in possession.

Dated: March 17, 2022.

Respectfully submitted,

BUI & NHAN, PLLC.

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/s/ Scott K. Bui

Scott K. Bui,

Attorney-in-Charge

State Bar No.: 00789185

Attorney for TAALVI, LLC.

CERTIFICATE OF CONFERENCE

The undersigned certifies on March 14, 2022, prior to filing this motion, I emailed debtor's counsels and later conferred with Mr. Brendon Singh, and he has indicated that he is working on a proposal. Thus, Movant believes that the Motion is opposed. The undersigned will continue to attempt to resolve this matter.

CERTIFICATE OF SERVICE

This is to certify that pursuant to Bankruptcy Local Rule 4001(a), on March 18, 2022, I caused a true and correct copy of the foregoing Motion for Relief from the Automatic Stay to be served upon the Debtor, the Chapter 13 Trustee, and the U.S. Trustee, and all parties requesting notice via U.S. Mail as listed on the attached Service List.

/s/ Scott K. Bui

Scott K. Bui,

Via First Class Mail

SMOKINKWR, LLC.

Via ECF System

Thomas Frederick Jones, III

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Brendon D. Singh

[CM/ECF](#)

U.S. Trustee's Office

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